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February 5, 2003

Via Electronic Comment Filing System

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte Presentation*
CC Docket Nos. 01-338, 98-147, 96-98

Dear Ms. Dortch:

A great deal of attention in this proceeding has focused on the continuing availability of the unbundled network element platform or “UNEP” and its relationship to the growth of facilities-based competition. Even as it debates these issues, however, the Commission must not lose sight of the fact that there are competitors, such as CMRS carriers, that have already made enormous investments in facilities, yet require access to certain discrete, yet critical network elements that cannot yet be duplicated.

Wireless carriers are beginning to provide effective competition to the incumbent LECs in the residential market. AWS was pleased to note the particular emphasis Chairman Powell and other Commissioners placed on wireless competition in their recent testimony before the Senate Commerce Committee. Chairman Powell singled out wireless carriers for “special notice” as “the most significant competition in voice.” Commissioner Adelstein stated that “[w]ireless services offer a dynamic and burgeoning

new avenue for competition in both broadband and voice communications.” The Commission’s emphasis on inter-modal competition is fully consistent with AWS’s continuing efforts to capitalize on wireline-to-wireless migration.¹

In order to fulfill the hope of inter-modal competition, however, CMRS carriers must have cost-based access to the one piece of the network that they cannot duplicate, interoffice transport. Whatever the merits of the UNEP as a method of competitive entry, CMRS carriers have constructed extensive facilities and made substantial investments in their own networks. Unlike carriers that seek to provide service using all of the incumbent LECs’ network, CMRS carriers need only a piece of the local network to be made available, *i.e.*, unbundled transport. It is indisputable that the unbundling provisions of the 1996 Act were meant to enable carriers that build their own networks to the extent economically practicable to use unbundled elements as necessary to fill in the gaps.

The Supreme Court explicitly recognized this point when it stated “entrants may need to share some facilities that are very expensive to duplicate (say, loop elements) in order to be able to compete in other, more sensibly duplicable elements (say, digital switches or signal-multiplexing).”² In the case of CMRS carriers, we have undertaken the enormous expense of duplicating the local loop, through the purchase of spectrum and by building thousands of cell sites, and we have duplicated local switches. We cannot, however, also duplicate the thousands of interoffice transport facilities needed to link these cell sites to mobile switching centers. Nor should CMRS carriers be expected to do so. The replication of the incumbent LECs’ transport network for the purposes of

¹ See, AT&T Wireless Annual Report 2001, 2001 Financials at 5.

² *Verizon Communications, Inc., v. Federal Communications Commission*, 535 U.S. 467, n. 38 (2002).

backhauling traffic would not only be enormously expensive, but economically wasteful. Moreover, in most areas of the country, particularly in less densely populated areas where we nevertheless must place our cell sites, no wholesale transport market yet exists. CMRS carriers thus need access to this one part of the local network, interoffice transport facilities, until we or the competitive wireline carrier community develops alternatives.

It is no answer to say that CMRS carriers should simply continue to buy these facilities from incumbent LEC special access tariffs. We are competing with the incumbent LECs for the traffic that traverses the piece of the network over which they maintain monopoly control and charge exorbitant rates. We are captive customers of our prime competitors in the local market for a critical input. The incumbent LECs can stifle the emerging local competition provided by the CMRS carriers simply by maintaining the current high prices for transport. Increasingly, through the grant of pricing flexibility, incumbent LECs special access rates are deregulated, and they are using this deregulation not to lower prices to meet competition, as the Commission predicted, but to increase prices.

There is no reasonable justification for requiring CMRS carriers to continue to rely on incumbent LEC special access services, which already are priced well above the incumbent's costs, particularly while wireline competitors have access to the same facilities and for same purposes at cost-base rates. Indeed, for the residential market, current UNEP providers may be required to transition to their own switches, but we expect they will still have access to unbundled loops and transport. As competition among incumbent LECs, wireline competitors and CMRS carriers for residential services

heats up, CMRS carriers, especially CMRS carriers not affiliated with the Bell companies, could be at a distinct disadvantage without access to UNEs.

We appreciate your attention to these important issues.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter is being provided, via the Electronic Comment Filing System, for inclusion in the public record of the above-referenced proceedings.

Very truly yours,

/s/ Douglas I. Brandon
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AT&T Wireless Services, Inc.

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